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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 276. 42.

LOUIS LOEB, PLAINTIFF IN ERROR,

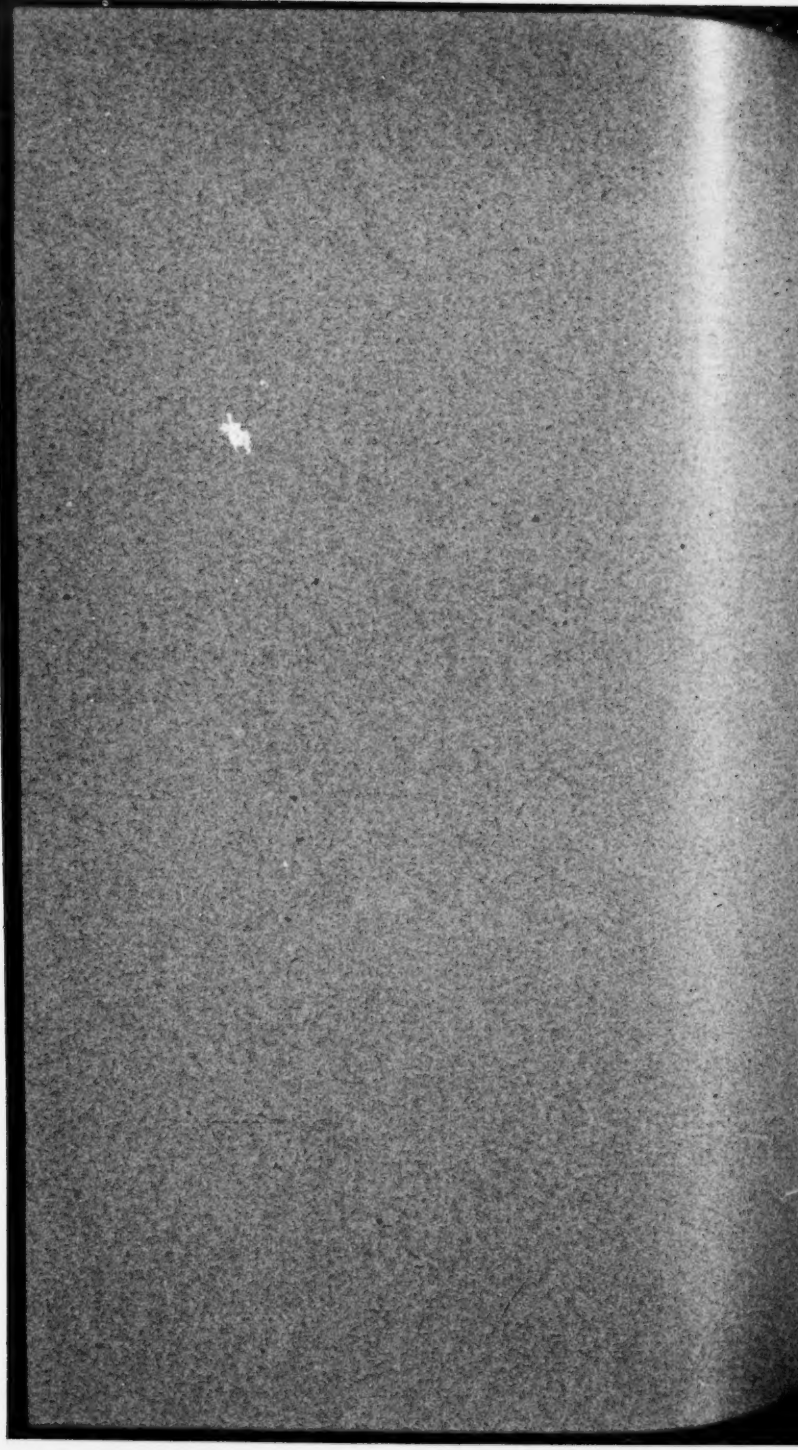
vs.

THE TRUSTEES OF COLUMBIA TOWNSHIP, HAMILTON COUNTY, OHIO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED APRIL 27, 1899.

(17,385.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 10, 1899.

1 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, Ohio, in said district, on the first Tuesday of October, being the fourth day of that month, in the year of our Lord one thousand eight hundred and ninety-eight, and of the American Independence the one hundred and twenty-third—present, the Honorable A. C. Thompson, district judge—among the proceedings had were the following, to wit:

LOUIS LOEB, Plaintiff,
vs.
THE TRUSTEES OF COLUMBIA TOWNSHIP, Hamilton County, Ohio, Defendant. } No. 5099. At Law.

Be it remembered that heretofore, to wit, on the 4th day of November, A. D. 1897, came the plaintiff, by his counsel, and filed in the clerk's office of the court aforesaid his certain petition herein against the defendant; said petition is clothed in the words and figures following, to wit:

Petition.

2 In the Circuit Court of the United States for the Southern District of Ohio, Western Division.

LOUIS LOEB, Plaintiff,
vs.
THE TRUSTEES OF COLUMBIA TOWNSHIP, HAMILTON County, Ohio, Defendant. } Petition.

Plaintiff is a citizen and resident of the State of Indiana. Defendant, The Trustees of Columbia Township of Hamilton County, State of Ohio, is a corporation organized under the laws of the State of Ohio and a resident of the southern district of Ohio, western division, and a citizen of said State of Ohio.

Plaintiff says that on April 27, 1893, the legislature of the State of Ohio passed an act entitled "An act to authorize the trustees of Columbia township, Hamilton county, Ohio, to widen and extend Williams avenue," which act is fully set out in volume 90, pp. 251 and 252, of the Local Laws of the State of Ohio.

Said act provides, among other things, as follows, viz:

"SECTION 1. Be it enacted by the General Assembly of the State of Ohio, That the trustees of Columbia township be, and they are hereby authorized and required to widen and extend Williams avenue from its intersection with the Duck Creek road eastwardly along the north lines of sections thirty-three and twenty-seven in

said township, to a point where the same intersects the Madison road; said avenue to be widened to a width of sixty feet, of which said section lines are to be the center line, and shall appropriate and enter upon and hold any real estate within the township necessary for such purpose."

"SECTION 2. The trustees of said Columbia township, shall immediately make application to the probate court of the county as provided in section 2236 of the Revised Statutes of Ohio, and
3 thereafter, as far as practicable, the proceedings shall conform to and be had under the provisions of sections 2236 to 2261, inclusive of the Revised Statutes of Ohio."

"SECTION 4. For the purpose of raising money necessary to meet the expense of the improvement, the trustees of said township are hereby authorized and directed to issue the bonds of the township, payable in instalments or at intervals not exceeding in all the period of six (6) years, bearing interest at the rate of six (6) per cent. per annum, which bonds shall not be sold for less than their par value."

"SECTION 5. This act shall take effect and be in force from and after its passage."

Thereupon the trustees of Columbia township, acting under the aforesaid act and proceeding to make said improvement, appropriated the land for said avenue in the manner provided in said act.

For the purpose of raising the money necessary to meet the expense of said appropriation, the trustees of said township, on or about the 29th day of September, 1894, duly executed and issued, in proper form and in accordance with the terms and provisions of the above act, twenty-five bonds of the said Columbia township, of $500 each, five payable respectively in 1, 2, 3, 4, and 5 years from date and one, for $432.00, payable 1 year from date, all dated September 29, 1894, and numbered consecutively from one to twenty-six, inclusive, and all payable to the order of the bearer, at the office of the treasurer of said county, and bearing interest at the rate of six per cent. per annum, payable semi-annually, on the 29th days of March and September of each year, the same being represented, up to maturity of said bonds, by coupons thereto attached.

On or about September 29, 1894, said bonds were sold by said Township to a *bona fide* purchaser and the highest bidder for
4 $13,325.00 and accrued interest. On or about September 29, 1895, the trustees of said township paid bonds Nos. 1, 2, 3, 4, and 5, then due, each for $500.00, and No. 26, for $432.00, and the interest coupons, payable September 29, 1895, on all of the aforesaid twenty-six bonds.

On March 29, 1896, they paid the interest coupons, payable March 29, 1896, on the twenty bonds still remaining unpaid, including the five hereafter set forth.

First Cause of Action.

1. Plaintiff says that his action is founded upon and he is the *bona fide* owner and holder for value of bond No. 6 of the aforesaid issue, of which the following is a true copy, namely:

5 No. 6. *Six Per Cent. Bond.* $500.

COLUMBIA TOWNSHIP, *Hamilton County, State of Ohio.*

This is one of a series of 25 bonds of $500 each, issued by virtue of an act of the General Assembly of the State of Ohio, passed April 27, 1893, authorizing the trustees of Columbia township to levy an assessment on the real estate abutting on the Williams avenue between Duck Creek road and Madison pike and one bond for four hundred and thirty-two dollars for the payment of twelve thousand nine hundred and thirty-two dollars, for widening and extending said avenue.

By virtue of said act, the Trustees of Columbia Township hereby acknowl*e*g*d*e said township indebted to the bearer in the sum of five hundred dollars, which sum they, as trustees, and for their successors in office, promise to pay to the bearer hereof, upon the surrender of this bond, at the office of the treasurer of said township, on the 29th day of September, 1896, and also interest thereon at the rate of six per cent. per annum, payable semi-annually, on the 29th days of March and September of each year during the continuance of this loan, on presentation to the township treasurer of the respective coupons hereto attached.

In witness whereof, we, the undersigned Trustees of Columbia Township, Hamilton County, Ohio, have hereunto set our hands and seals this 29th day of Sept. A. D. 1894.

Z. T. DEMAR, [SEAL.]
W. H. SETTLE, [SEAL.]
E. F. SEILKOP, [SEAL.]
Trustees of Columbia Township.

[Columbia Township Seal, Hamilton Co., Ohio.]

E. C. FOWBLE,
Clerk of Township.

Plaintiff has made demand for payment of said bond in accordance with the terms thereof, but defendant refuses to pay the same or any part thereof.

There is due the plaintiff from said defendant on said bond the sum of five hundred dollars ($500), with interest from September 29, 1896, for which he asks judgment.

6 *For Second Cause of Action.*

2. Plaintiff says that his action is founded upon and he is the *bona fide* owner and holder for value of bond No. 7 of the aforesaid issue, of which the following is a true copy, namely:

No. 7. *Six Per Cent. Bond.* $500.

COLUMBIA TOWNSHIP, *Hamilton County, State of Ohio.*

This is one of a series of 25 bonds of $500 each, issued by virtue of an act of the General Assembly of the State of Ohio, passed April 27, 1893, authorizing the trustees of Columbia township to levy an assessment on the real estate abutting on the Williams avenue between Duck Creek road and Madison pike and one bond for four hundred and thirty-two dollars for the payment of twelve thousand nine hundred and thirty-two dollars, for widening and extending said avenue.

By virtue of said act, the Trustees of Columbia Township hereby acknowl*e*g*d*e said township indebted to the bearer in the sum of five hundred dollars, which sum they, as trustees, and for their successors in office, promise to pay to the bearer hereof, upon the surrender of this bond, at the office of the treasurer of said township, on the 29th day of September 1895, and also interest thereon at the rate of six per cent. per annum, payable semi-annually, on the 29th days of March and September of each year during the continuance of this loan, on presentation to the township treasurer of the respective coupons hereto attached.

In witness whereof, we, the undersigned Trustees of Columbia Township, Hamilton County, Ohio, have hereunto set our hands and seals this 29th day of Sept. A. D. 1894.

Z. T. DEMAR, [SEAL.]
W. H. SETTLE, [SEAL.]
E. F. SEILKOP, [SEAL.]
Trustees of Columbia Township.

[Columbia Township Seal, Hamilton Co., Ohio.]

E. C. FOWBLE,
Clerk of Township.

Plaintiff has made demand for payment of said bond in accordance with the terms thereof, but defendant refuses to pay the same or any part thereof.

There is due the plaintiff from said defendant on said bond the sum of five hundred dollars ($500), with interest from September 29, 1896, for which he asks judgment.

7 *For Third Cause of Action.*

3. Plaintiff says that his action is founded upon and he is the *bona fide* owner and holder for value of bond No. 8 of the aforesaid issue, of which the following is a true copy, namely:

No. 8. *Six Per Cent. Bond.* $500.

COLUMBIA TOWNSHIP, *Hamilton County, State of Ohio.*

This one of a series of 25 bonds of $500 each, issued by virtue of an act of the General Assembly of the State of Ohio, passed April

27, 1893, authorizing the trustees of Columbia township to levy an assessment on the real estate abutting on the Williams avenue between Duck Creek road and Madison pike and one bond for four hundred and thirty-two dollars for the payment of twelve thousand nine hundred and thirty-two dollars, for widening and extending said avenue.

By virtue of said act, the Trustees of Columbia Township hereby acknowlegde said township indebted to the bearer in the sum of five hundred dollars, which sum they, as trustees, and for their successors in office, promise to pay to the bearer hereof, upon the surrender of this bond, at the office of the treasurer of said township, on the 29th day of September 1896, and also interest thereon at the rate of six per cent. per annum, payable semi-annually, on the 29th days of March and September of each year during the continuance of this loan, on presentation to the township treasurer of the respective coupons hereto attached.

In witness whereof, we, the undersigned Trustees of Columbia Township, Hamilton County, Ohio, have hereunto set our hands and seals this 29th day of Sept. A. D. 1894.

Z. T. DEMAR, [SEAL.]
W. H. SETTLE, [SEAL.]
E. F. SEILKOP, [SEAL.]
Trustees of Columbia Township.

[Columbia Township Seal, Hamilton Co., Ohio.]

E. C. FOWBLE,
Clerk of Township.

Plaintiff has made demand for payment of said bond in accordance with the terms thereof, but defendant refuses to pay the same or any part thereof.

There is due the plaintiff from said defendant on said bond the sum of five hundred dollars ($500), with interest from September 29, 1896, for which he asks judgment.

8 *For Fourth Cause of Action.*

4. Plaintiff says that his action is founded upon and he is the *bona fide* owner and holder for value of bond No. 9 of the aforesaid issue, of which the following is a true copy, namely:

No. 9. *Six Per Cent. Bond.* $500.

COLUMBIA TOWNSHIP, *Hamilton County, State of Ohio.*

This is one of a series of 25 bonds of $500 each, issued by virtue of an act of the General Assembly of the State of Ohio, passed April 27, 1893, authorizing the trustees of Columbia township to levy an assessment on the real estate abutting on the Williams avenue between Duck Creek road and Madison pike and one bond for four hundred and thirty-two dollars for the payment of twelve thousand

nine hundred and thirty-two dollars, for widening and extending said avenue.

By virtue of said act, the Trustees of Columbia Township hereby acknowl*egde* said township indebted to the bearer in the sum of five hundred dollars, which sum they, as trustees, and for their successors in office, promise to pay to the bearer hereof, upon the surrender of this bond, at the office of the treasurer of said township, on the 29th day of September 1896, and also interest thereon at the rate of six per cent. per annum, payable semi-annually, on the 29th days of March and September of each year during the continuance of this loan, on presentation to the township treasurer of the respective coupons hereto attached.

In witness whereof, we, the undersigned Trustees of Columbia Township, Hamilton County, Ohio, have hereunto set our hands and seals this 29th day of Sept. A. D. 1894.

Z. T. DEMAR, [SEAL.]
W. H. SETTLE, [SEAL.]
E. F. SEILKOP, [SEAL.]
Trustees of Columbia Township.

[Columbia Township Seal, Hamilton Co., Ohio.]

E. C. FOWBLE,
Clerk of Township.

Plaintiff has made demand for payment of said bond in accordance with the terms thereof, but defendant refuses to pay the same or any part thereof.

There is due the plaintiff from said defendant on said bond the sum of five hundred dollars ($500), with interest from September 29, 1896, for which he asks judgment.

9 *For a Fifth Cause of Action.*

5. Plaintiff says that his action is founded upon and he is the *bona fide* owner and holder for value of bond No. 10 of the aforesaid issue, of which the following is a true copy, namely:

No. 10. *Six Per Cent. Bond.* $500.

COLUMBIA TOWNSHIP, *Hamilton County, State of Ohio.*

This is one of a series of 25 bonds of $500 each, issued by virtue of an act of the General Assembly of the State of Ohio, passed April 27, 1893, authorizing the trustees of Columbia township to levy an assessment on the real estate abutting on the Williams avenue between Duck Creek road and Madison pike and one bond for four hundred and thirty-two dollars for the payment of twelve thousand nine hundred and thirty-two dollars, for widening and extending said avenue.

By virtue of said act, the Trustees of Columbia Township hereby acknowl*egde* said township indebted to the bearer in the sum of five hundred dollars, which sum they, as trustees, and for their suc-

cessors in office, promise to pay to the bearer hereof, upon the surrender of this bond, at the office of the treasurer of said township, on the 29th day of September, 1896, and also interest thereon at the rate of six per cent. per annum, payable semi-annually, on the 29th days of March and September of each year during the continuance of this loan, on presentation to the township treasurer of the respective coupons hereto attached.

In witness whereof, we, the undersigned Trustees of Columbia Township, Hamilton County, Ohio, have hereunto set our hands and seals this 29th day of Sept. A. D. 1894.

Z. T. DEMAR, [SEAL.]
W. H. SETTLE, [SEAL.]
E. F. SEILKOP, [SEAL.]
Trustees of Columbia Township.

[Columbia Township Seal, Hamilton Co., Ohio.]

E. C. FOWBLE,
Clerk of Township.

Plaintiff has made demand for payment of said bond in accordance with the terms thereof, but defendant refuses to pay the same or any part thereof.

There is due the plaintiff from said defendant on said bond the sum of five hundred dollars ($500), with interest from September 29, 1896, for which he asks judgment.

10 *For Sixth Cause of Action.*

6. Plaintiff's action is founded upon and he is the *bona fide* owner and holder for value of coupon on bond No. 6 of the aforesaid issue, of which the following is a true copy, namely:

$15.00. Coupon No. 4.

The treas. Columbia Tp. will pay to bearer at 4th nat'l bank in Cincin., on the 29th day of Sept., 1896, fifteen dollars, six months' interest on the bond No. 6, for $500, issued Sept. 29, 1894.

E. C. FOWBLE, *Clerk.*

Plaintiff has made demand for payment of said coupon in accordance with the terms thereof, but the defendant refuses to pay the same or any part thereof. There is due the plaintiff from said defendant on said coupon the sum of $15.00, with interest from September 29, 1896, for which he asks judgment.

For Seventh Cause of Action.

7. Plaintiff's action is founded upon and he is the *bona fide* owner and holder for value of coupon on bond No. 7 of the aforesaid issue, of which the following is a true copy, namely:

$15.00. Coupon No. 4.

The treas. Columbia Tp. will pay to bearer at 4th nat'l bank in Cincin., O., on the 29th day of Sept., 1896, fifteen dollars, six months' interest on the bond No. 7, for $500, issued Sept. 29, 1894.

E. C. FOWBLE, *Clerk.*

Plaintiff has made demand for payment of said coupon in accordance with the terms thereof, but the defendant refuses to pay the same or any part thereof. There is due the plaintiff from said defendant on said coupon the sum of $15.00, with interest from September 29, 1896, for which he asks judgment.

11 *For Eighth Cause of Action.*

8. Plaintiff's action is founded upon and he is the *bona fide* owner for value of coupon No. 8 of the aforesaid issue, of which the following is a true copy, namely:

$15.00. Coupon No. 4.

The treas. Columbia Tp. will pay to bearer at 4th nat'l bank at Cincin., O., on the 29th day of Sept., 1896, fifteen dollars, six months' interest on the bond No. 8, for $500, issued Sept. 29, 1894.

E. C. FOWBLE, *Clerk.*

Plaintiff has made demand for payment of said coupon in accordance with the terms thereof, but the defendant refuses to pay the same or any part thereof.

There is due the plaintiff from said defendant on said coupon the sum of fifteen dollars, with interest from September 29, 1896, for which he asks judgment.

12 *For Ninth Cause of Action.*

9. Plaintiff's action is founded upon and he is the *bona fide* owner for value of coupon No. 9 of the aforesaid issue, of which the following is a true copy, namely:

$15.00. Coupon No. 4.

The treas. Columbia Tp. will pay to bearer at 4th nat'l bank at Cincin., O., on the 29th day of Sept., 1896, fifteen dollars, six months' interest on the bond No. 9, for $500, issued Sept. 29, 1894.

E. C. FOWBLE, *Clerk.*

Plaintiff has made demand for payment of said coupon in accordance with the terms thereof, but the defendant refuses to pay the same or any part thereof.

There is due the plaintiff from said defendant on said coupon the sum of fifteen dollars, with interest from September 29, 1896, for which he asks judgment.

For Tenth Cause of Action.

10. Plaintiff's action is founded upon and he is the *bona fide* owner and holder for value of coupon on bond No. 10 of the aforesaid issue, of which the following is a true copy, namely:

$15 00. Coupon No. 4.

The treas. Columbia Tp. will pay to bearer at 4th nat'l bank in Cincin., O., on the 29th day of Sept., 1896, fifteen dollars,
13 six months' interest on the bond No. 10, for $500, issued Sept. 29, 1894.

E. C. FOWBLE, *Clerk.*

Plaintiff has made demand for payment of said coupon in accordance with the terms thereof, but the defendant refuses to pay the same or any part thereof. There is due the plaintiff from said defendant on said coupon the sum of $15.00, with interest from September 29, 1896, for which he asks judgment and for his costs in this action.

C. HAMMOND AVERY,
Attorney for Plaintiff.

UNITED STATES, }
State of Ohio, Hamilton County, } *ss:*

C. Hammond Avery, being first duly sworn, says that the foregoing action is founded upon written instruments for the payment of money, and such instruments are in his possession.

That the plaintiff is not a resident and is absent from Hamilton county, State of Ohio, and also from the southern district, western division of Ohio, and that the allegations of the foregoing petition are true, as he believes.

C. HAMMOND AVERY.

Sworn to before me and subscribed in my presence this 3rd day of November, 1897.

[SEAL.] ALBERT WILLIAMSON,
Notary Public, Hamilton County, Ohio.

14 *Præcipe.*

Clerk: Issue summons, endorsed: Action for money; amount claimed, $2,575.00, with interest thereon at six per cent. from September 29, 1896.

C. HAMMOND AVERY,
Attorney for Plaintiff.

And afterwards, to wit, on the same day as aforesaid, there was issued out of the clerk's office of the court aforesaid our certain summons, directed to the marshal of the district and against the defendant herein; said summons is clothed in the words and figures following, to wit:

Summons.

UNITED STATES OF AMERICA, *Southern District of Ohio,* } ss:

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon the Trustees of Columbia Township, Hamilton County, Ohio, a corporation organized under the laws of the State of Ohio, citizen of and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the fifth Tuesday in the month of November, 1897, to answer unto Louis Loeb, citizen of and resi-
15 dent in the State of Indiana, in civil action for money; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this fourth day of November, A. D. 1897, and in the 122nd year of the Independence of the United States of America.

Attest:

[SEAL.] B. R. COWEN, *Clerk,*
By ROBERT C. GEORGI, *Deputy.*

Endorsed: $10.00 deposited security for costs. Action for the recovery of money. Amount claimed, $2,575.00, with interest thereon at six per cent. from September 29, 1896, for which judgment may be taken, unless they answer on or before the fifth Tuesday in the month of November, 1897.

16 And afterwards, to wit, on the 11th day of November, A. D. 1897, came the marshal of the district, to whom the aforesaid summons was in form directed, and returned the same into the clerk's office of the court aforesaid, with his proceedings thereon endorsed, in the words and figures following, to wit:

Marshal's Return of Summons.

Received this writ on the 4th day of November, A. D. 1897; and on the 6th day of November, A. D. 1897, I served the same by handing a true copy thereof, with the endorsement thereon, to David L. Sampson and Wm. Settle, trustees of Columbia township; and on the 6th day of November, A. D. 1897, I left a like copy thereof, with the endorsement thereon, at the usual place of residence, in the hands of Minnie Rempe, wife of John Rempe, trustee of Columbia township.

Fees: Total, $8.70.

MICHAEL DEVANNEY, *Marshal,*
By W. H. SPILLARD, *Deputy.*
R. P. SNYDER, *Deputy.*

17 And afterwards, to wit, on the 16th day of November, A. D. 1897, the following cost bond was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Cost Bond.

LOUIS LOEB
vs.
THE TRUSTEES OF COLUMBIA TOWNSHIP, Hamilton County, Ohio. } No. 5099. Cost Bond.

I hereby acknowledge myself security for costs in this case.
SAMUEL S. BLOOM. [SEAL.]

Taken and acknowledged before me this 16th day of November, 1897.
ROB'T C. GEORGI,
[SEAL.] *Deputy Clerk, U. S. Circuit Court, S. D. O.*

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Samuel S. Bloom, a resident of said district, do solemnly swear that after paying my just debts and liabilities I am worth two thousand dollars in real estate within the jurisdiction of this court and subject to execution, levy, and sale.
SAMUEL S. BLOOM.

Sworn to and subscribed before me this 16th day of Nov., 1897.
ROB'T C. GEORGI,
[SEAL.] *Deputy Clerk, U. S. Circuit Court, S. D. O.*

18 And afterwards, to wit, on the 30th day of November, A. D. 1897, the following demurrer was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Demurrer.

The Circuit Court of the United States, Southern District of Ohio, Western Division.

LOUIS LOEB, Plaintiff,
vs.
THE TRUSTEES OF COLUMBIA TOWNSHIP, Hamilton County, Ohio, Defendant. } No. 5099. Demurrer.

Now comes the defendant and demurs to the several causes of action in the petition of plaintiff herein, for the reason that the same do not state facts sufficient to constitute a cause of action against this defendant.

BURCH & JOHNSON,
Attorneys for Defendants.

And afterwards, to wit, on the 9th day of January, A. D. 1899, the following opinion was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Opinion of Judge A. C. Thompson, District Judge.

19 United States Circuit Court, Southern District of Ohio, Western Division.

LOUIS LOEB, Plaintiff,
vs.
THE TRUSTEES OF COLUMBIA TOWNSHIP, HAMILTON County, Ohio, Defendant. } No. 5099.

This case is submitted to the court on a demurrer to the petition. The demurrer alleges that the petition does not state facts sufficient to constitute a cause of action.

The points made in argument in support of the demurrer are:

I. The petition does not show that the plaintiff, Louis Loeb, is the original holder of the bonds sued on, and if he be an assignee or subsequent holder thereof he is not entitled to maintain this action, because the bonds are payable to bearer, and were not made by a corporation.

II. That the act of the General Assembly of the State of Ohio, under and by virtue of which the bonds were issued, contravenes the provisions of the constitution of the State of Ohio, and that therefore the bonds are invalid.

III. That said act contravenes the provisions of the Constitution of the United States, and that therefore the bonds are invalid.

20 First. The first point is predicated on the assumption that the township of Columbia is not a corporation within the meaning of the act of Congress of August 13, 1888 (1 Supplement, 612), one provision of which reads as follows:

"Nor shall any circuit or district court have cognizance of any suit, except upon foreign bills of exchange, to recover the contents of any promissory note or other chose in action in favor of any assignee, or of any subsequent holder, if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made."

The argument in support of this proposition assumes that the corporation contemplated by this law must have all the powers and attributes of a private corporation, and authorities are cited to show that the quasi corporation known as the township of Columbia is wanting in this respect.

But section 1376 of the Revised Statutes of Ohio provides that:

"Every civil township heretofore or hereafter lawfully laid off and designated, is declared to be, and is hereby constituted, a body politic and corporate, for the purpose of enjoying and exercising the rights and privileges conferred upon it by law; it shall be capable of suing and being sued, pleading and being impleaded."

And the supreme court of Ohio has held that:

"For township liabilities an action lies against the trustees, and it is better to sue them without giving their individual names."

Harding *v.* Trustees of New Haven Township, 3 Ohio, 227.
Trustees of Concord Township *v.* Miller, 5 Ohio, 184.
Wilson *v.* Trustees of No. 16, 8 Ohio, 174.

In Lincoln County *v.* Luning, 133 U. S., 530, it is said:

"With regard to the first objection, it may be observed that
21 the records of this court for the last thirty years are full of suits against counties, and it would seem as though by general consent the jurisdiction of the Federal courts in such suits had become established."

Again:

"The power to contract with citizens of other States implies liability to suit by citizens of other States."

Clearly Columbia township is a corporation "for the purpose of enjoying and exercising the rights and privileges conferred upon it by law," and it is capable of being sued upon liabilities which by law it is authorized to incur. The demurrer cannot be sustained upon this ground.

Second. It is claimed that it was not within the competency of the General Assembly to—

"authorize the trustees of a particular township to widen and extend a certain road in a prescribed manner; that the exercise of such power over the affairs of a township was administrative in character and not legislative, and that the act in question is for such reason invalid."

In State *ex rel.* Hibbs *v.* Commissioners, 35 O. S., 458, paragraphs 2, 3, & 4 of the syllabus read as follows:

2. "An act providing for the improvement of a designated county road, is local in its nature, and not in conflict with article 2, section 26, of the constitution, which provides that, 'all laws of a general nature shall have a uniform operation throughout the State.'"

3. "An act requiring county commissioners to cause a designated road to be improved, and to levy a tax to defray the expense thereof, where the road is open to the public, is not invalid for want of power in the General Assembly to pass it."

4. "An act providing 'that the commissioners of Franklin county be, and they are hereby, authorized and directed to levy
22 * * * a special tax not to exceed,' etc., to improve a county road, is a mandatory statute, and the commissioners may be compelled by mandamus to obey its provisions."

The act under consideration in that case which was declared to be constitutional reads as follows:

"SECTION 1. That the commissioners of Franklin county be, and they are hereby, authorized and directed to levy, at their June session, A. D. 1877, a special tax not to exceed the amount of the estimate of the engineer as hereinafter provided, for the purpose of building, grading, and graveling or macademizing the road from

South High street, in the city of Columbus, along the Green Lawn Avenue road to its terminus in the old Chillicothe road."

"SEC. 2. The said commissioners shall cause a survey and estimate of said road to be made by some competent engineer, and the letting for said improvement provided for in section one shall not exceed the amount of such estimate after expenses are paid; and the commissioners in these proceedings shall be governed by the laws now in force, so far as they may be applicable, relating to their duties in regard to free turnpike roads."

"SEC. 3. This act shall take effect and be in force from and after its passage." 74 Ohio L., 472.

The answer of the commissioners contains the following averments:

"'This board does not recognize the necessity of said improvement. This improvement consists in part, in the building, grading, and graveling, or macademizing of a street within the corporate limits of the city of Columbus. It will not be of a general benefit, but will be of local benefit and interest only to those using Green Lawn cemetary as a burial place, to those citizens who own lands contiguous to or in the vicinity of said road, and to such others as may prefer to use this road to other roads leading in the same general direction.

"'The board do not deem it just to make such improvement at the expense of the whole county, and do not believe that the legislature intended, by the acts set forth in the writ, to compel this board to make said improvement whether the doing so met with the approval of its judgment or not.

23 "'The board regards said act of the legislature to be of doubtful constitutionality, if it should be construed to intend that the board shall make said improvement, and shall levy a tax to pay the same upon the whole county'" (p. 460).

And counsel for the commissioners say:

"The respondents claim that the law as passed is unconstitutional and void, and that they are not bound to act under it, for the following reasons. * * *

"2. The General Assembly cannot constitutionally compel them, without their consent, nor compel the people of Franklin county, acting through them as their representatives, to make an improvement which is of local use solely.

"3. Under the constitution and laws of Ohio the board of county commissioners are to be the sole judges of the necessity of a merely local improvement.

"4. The improvement in question is such a local improvement, and is not of such a public character as to give the General Assembly power over it" (p. 463).

The court say, at page 466:

"The action is to compel the commissioners of Franklin county to levy a tax 'for the purpose of building, grading and graveling or macademizing' a road, commencing in the city of Columbus and intersecting a public road near the city. * * * The tax is provided for by an act passed in 1877, set forth in the statement

of the case, but the commissioners decline to make the improvement, on several grounds, which we will now consider.

"3. The power of the legislature to pass a mandatory statute, requiring the commissioners to levy the tax and improve the road in question, is denied by the defendant. The only provision which the constitution contains with respect to the county commissioners is the following: 'The commissioners of counties, the trustees of townships, and similar boards, shall have power of local taxation as may be prescribed by law.' Art. 10, sec. 7. Manifestly this is no limitation on the power of the General Assembly; and the inquiry therefore is as to the extent of such power. That it
24 is only legislative is conceded, but that is undeniably a very broad power and includes, generally, the right to direct, *in invitum*, the construction and *and* repair of public highways, and the levy of taxes to defray the necessary expenses thereof. That the power is liable to great abuse is denied by no one, but the responsibility, as well as the power, rests with the legislature. Many cases may be found which go further in support of this principle than we might be willing to go. People *v.* Flagg, 46 N. Y., 401; Philadelphia *v.* Field, 58 Penn. St., 320. See Lima *v.* McBride, 34 Ohio St., 338."

This decision was rendered in 1880 and was followed by numerous acts of the General Assembly directing mandatorily the improvement of designated roads, streets, and avenues in various parts of the State. These acts contained directions, more or less specific, for the improvement of said roads, etc., by widening, extending, grading, graveling, macademizing, etc., and provided for the assessment of the expense of the improvement wholly or in part on the abutting lands.

The decision was recognized by the legislature as authority for the acts contained in the cases below cited.

In Weston *v.* Commissioners, 6 Ohio Circuit Court Reports, 641, the act under consideration was entitled "An act to extend, widen, grade, gravel, macademize, and improve Erie avenue, in Columbia township, Hamilton county, Ohio," and provided for the assessment of the cost and expense of the improvement on the "lots and lands situated within one mile on each side thereof." The commissioners of Hamilton county were "authorized and required" to make the improvement (87 Ohio Laws, 577).

25 The court say the claims of the plaintiffs are substantially these:

5th. "That said act in its operation is most unequal and unjust,—'that it was passed without the request, knowledge or consent of the plaintiffs, and that its passage was procured by and in the interest of persons who own a large quantity of ground outside of the assessing district, but within a radius of one mile from the eastern terminus of the avenue' * * * 'and that it was the object of said persons so procuring the passage of said act, to enhance the value of these lands, and to enrich themselves by having this expense saddled on the plaintiffs and other victims in the assessing district, and to make their lands and farms suitable for building

lots;' and the petition alleges that 'they succeeded in their enterprising endeavor.'"

And the court proceed to say:

"But it cannot be denied that if the allegations of the petition hereinbefore quoted, as to the operation and effect of this statute in this respect, and as to the means used to bring about its passage are true, great injustice has been done to the plaintiffs, at least, in this case. Indeed there are strong grounds to believe that special legislation like this, of a purely local character, brought about by the efforts of a few persons financially interested therein, whereby it is made obligatory upon the commissioners of a county to make a certain local improvement, and to assess the cost thereof on property within a certain district or to put the cost upon the general duplicate, is open to very grave objections. But if in addition to this, lands specially benefited, and adjacent to the improvement, are studiously exempted from assessment therefor, and the burden is imposed on others farther removed therefrom, and not so much benefited, such legislation is essentially vicious, and courts will not be eager to enforce a statute open to such objections."

The court, nevertheless, upon the authority of The State *ex rel.* Hibbs *v.* Commissioners, 35 Ohio St., 458, held the law to be constitutional.

26 & 27 This decision sustaining the law was affirmed by the supreme court. No opinion was delivered on behalf of the majority of the supreme court, but Judges Minshall and Spear expressed their dissent as follows:

"It is not competent to the legislature to create an assessment district in a county or township for the making or the improvement of a highway, and require the improvement to be made without any discretion in the local authorities, or the people within the district. The legislature, in our opinion, does not possess such administrative powers. The case of State *ex rel.* Hibbs *v.* The Commissioners of Franklin County, 35 O. S., 458, is bad law and should be overruled." 30 W. L. B., 291.

In State *ex rel.* Archibald *v.* The Trustees of Columbia Township, 8 Ohio Circuit Court Reports, 691, the act in question in the case at bar was under consideration, and the court say:

"It is further objected that the General Assembly has not the right to pass such a statute requiring county commissioners or township trustees, without giving them any discretion in the matter, to construct such an improvement as this, and assess the cost of its construction on abutting property.

"We have had occasion heretofore to express our doubts as to the propriety or expediency of such legislation. But our understanding is that the constitutionality of such acts has been maintained by the decisions of the supreme court in 35 Ohio St., 458, and practically in the Weston case above referred to, decided by that court as reported in 30 Weekly Law Bulletin, 290, affirming the decision of this court in the Erie Avenue case. It is true that the authority of these cases is weakened by the facts that three of the six judges now composing the supreme court have expressly and forcibly

stated in dissenting opinions that such power does not exist, and that the decision in 35th Ohio St., 458, is bad law, and should
28 be overruled. But it has not as yet been overruled by the court, and whatever ground there may be to suppose that when the question is again submitted to it that it may be done, in our judgment, it is not the duty of this court to hold that such legislation is unconstitutional."

In Commissioners *v.* State *ex rel.*, 50 O. S., 653, the act there under consideration was entitled—

"An act to authorize and direct the commissioners of Hamilton county, to widen and improve the Montgomery road from the north corporation line of Cincinnati to the Plainfield road, and for other purposes."

And the court held that—

"That clause of the act which assumes to authorize the councils of the villages of Norwood and Pleasant Ridge to nominate and recommend to the commissioners two freeholders to act as trustees in the making of the contemplated improvement, is an attempt to confer upon such municipalities corporate power, and is in conflict with section 1, of article 13, of the constitution, which provides that, 'the General Assembly shall pass no special act conferring corporate power.'"

Judge Spear, in delivering the opinion, says, on page 658:

"Thus is presented a project for an extensive road improvement to be made under a special law, by county commissioners, without notice to property-owners liable for assessments or opportunity for a hearing, involving an outlay, stated by counsel and not controverted, to amount to $800,000, the work to be of a character usually made by municipalities under authority of general laws, after full notice to those to be affected, and full opportunity to be heard."

Judges Minshall and Burket dissented. Judge Minshall, delivering the dissenting opinion, says:

"I concur in the judgment that the act is invalid on the
29 ground stated in the opinion; and for the further reason, that it is not competent to the legislature to enact a statute by which it is directed that a certain road shall be laid out and improved in a specified manner, and the cost assessed upon the abutting property-holders, without any discretion in the local authorities, or desire on the part of those to be assessed. An act of this kind is not properly a law; it is an order made in the exercise of a power, that is not legislative in character. It belongs under our system of government to administrative officers, such as township trustees, county commissioners, and officers and boards possessing similar functions. * * * It is a usurpation of power not conferred on the legislature and cannot be checked too soon."

It will be seen that all these decisions assume that the right of the legislature to pass such acts was declared by the supreme court in Hibbs *v.* The Commissioners, and they each follow that case, notwithstanding the dissent of a minority of the supreme court and the expression of dissatisfaction by the judges of the circuit court.

All these decisions were rendered prior to the issuing of the bonds sued on in the case at bar.

Since the issuing of these bonds Hibbs *v.* The Commissioners has been reversed. The second paragraph of the syllabus in that case has been reversed by Hixson *v.* Burson, 54 O. S., 470, and the third and fourth paragraphs thereof by State *v.* Commissioners, 54 O. S., 333.

The first paragraph of the syllabus in State *v.* Commissioners reads as follows:

"It is not competent to the General Assembly to authorize the commissioners of a particular county to widen, extend and improve a certain road in a prescribed manner, one-half the cost and expenses to be assessed on lands within a prescribed limit, according
30 to benefits, and the other half to be levied on the general tax-payers of the county, without the request or consent of any of the parties to be assessed. The exercise of such power over the affairs of a county is administrative in character and not legislative; and the act is, for such reason, invalid."

Judge Minshall in delivering the opinion, after stating the grounds upon which the act is held to be invalid, as set forth in the first paragraph of the syllabus, adds:

"There is still another ground on which this statute is, in my opinion, clearly invalid. The location and construction of public roads is a subject of a general nature, and should, therefore, be regulated by general laws, uniform in operation throughout the State. Const., article 2, section 26. And have always until recently been so treated. But as this question is presented in a number of cases now pending in this court, it is not now passed on by the court; nor are my associates in any way bound by what is here said. The points decided are expressed in the syllabus."

In Hixson *v.* Burson the first and second paragraphs of the syllabus read as follows:

"1. Under section 26 of article 2 of the constitution, the constitutionality of an act is determined by the nature of its subject-matter, its operation and effect, and not alone by its form.

"2. The act of May 16, 1894, entitled, 'An act to authorize the county commissioners to provide for the construction, improvement and repair of public highways,' 91 O. L., 759, is unconstitutional in this, that its subject-matter is general, while its operation and effect are local. The second syllabus of State *ex rel.* Hibbs *v.* Commissioners of Franklin County, 35 Ohio St., 458, is overruled."

Under these decisions it is clear that the act of the General Assembly under which the bonds sued on in this case were issued is unconstitutional, and the question now is whether these decisions shall have retroactive effect so as to invalidate the bonds.

31 The law upon this question has been definitely settled by the supreme court in the cases of Douglass *v.* County of Pike, 101 U. S., 677, and Burgess *v.* Seligman, 107 U. S., 20. In Douglass *v.* County of Pike the court say (pages 686, 687), quoting from Rowan *v.* Runnels, 5 How., 134:

"Undoubtedly this court will always feel itself bound to respect

the decisions of the State courts, and, from the time they are made regard them as conclusive in all cases upon the construction of their own laws. But we ought not to give them a retroactive effect, and allow them to render invalid contracts entered into with citizens of other States, which, in the judgment of this court, were lawfully made. * * * The true rule is to give a change of judicial construction in respect to a statute the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment; that is to say, make it prospective, but not retroactive. After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision is to all intents and purposes the same in its effect on contracts as an amendment of the law by means of a legislative enactment."

And in Burgess *v.* Seligman the court say (pages 33, 34) that—

"We do not consider ourselves bound to follow the decision of the State court in this case. When the transactions in controversy occurred, and when the case was under the consideration of the circuit court, no construction of the statute had been given by the State tribunals contrary to that given by the circuit court. The Federal courts have an independent jurisdiction in the administration of State laws, co-ordinate with, and not subordinate to, that of the State courts and are bound to exercise their own judgment as to the meaning and effect of those laws. The existence of two co-ordinate jurisdictions in the same territory
32 is peculiar, and the results would be anomalous and inconvenient but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the State courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is. But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence. So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision, of the State tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean towards an agreement of views with the State courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without

sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well-considered decisions of the State courts. As, however, the very object of giving to the national courts jurisdiction to administer the laws of the States in controversies between citizens of different States was to institute independent tribunals which it might be supposed would be unaffected by local prejudices and sectional views, it would be a dereliction of their duty not to exercise an independent judgment in cases not foreclosed by previous adjudication."

See also a decision of the circuit court of appeals of this circuit in Louisville Trust Co. *v.* City of Cincinnati, 76 Fed. Rep., 296, where the doctrine of the case of Burgess *v.* Seligman is applied.

33 Coming to the case at bar, we find that from the time of the decision of the supreme court of Ohio, made in 1880, in the case of Hibbs *v.* The Commissioners, *supra*, that the doctrine that under the constitution of Ohio the General Assembly had power by legislative enactment to require boards of county commissioners and township trustees to improve a designated public road and provide for the expense of the improvement by the levy of a tax or the assessment of the property without the request or consent of the parties to be taxed or assessed, was maintained until the decision of the same court, made in 1896, in the case of State *v.* The Commissioners, *supra*.

It was questioned from time to time, as shown by the cases cited above, but each time the supreme court affirmed the doctrine of Hibbs *v.* The Commissioners, and continued to do so until long after the issuing of the bonds sued on. It was suggested in argument that this question was not decided in the case of Hibbs *v.* The Commissioners. I think it was, but let that be as it may, the courts of the State, common pleas, circuit, and supreme, assumed that it it was, and followed that case as authority for sustaining the constitutionality of acts like the one in question, and the dissenting judges refer to it as authority for the doctrine which they condemned.

The holding of the court in Hibbs *v.* The Commissioners, as set forth in the second paragraph of the syllabus, that—

"An act providing for the improvement of a designated road, is local in its nature, and not in conflict with article 2, section 26, of the constitution, which provides that, 'all laws of a general

34 nature shall have a uniform operation throughout the State,'"

—stood almost without question until the decision in the case of Hixson *v.* Burson, *supra*, which was rendered long after the issuing of the bonds sued on.

I hold, therefore, upon the authority of Douglass *v.* County of Pike and Burgess *v.* Seligman, *supra*, that the recent decisions of the supreme court of Ohio, which declared laws such as the one under consideration to be in conflict with the constitution of Ohio, cannot be given retroactive effect so as to invalidate these bonds, and the demurrer cannot be sustained upon that ground.

Third. Section 3 of the act under consideration provides that—

"The trustees shall receive reasonable compensation for their services, which, * * * with all costs and expenses of constructing said improvement together with the interest on any bonds issued by the trustees for the same, shall be levied and assessed upon each front foot of the lots and lands on each side of said Williams avenue and the termini mentioned in section 1 hereof."

It is claimed that the assessment immediately back on the abutting lands of the entire damages awarded the owners of the abutting lands, together with the costs and expenses of the condemnation proceedings, is the taking of private property without due process of law, contrary to the 14th amendment of the Constitution of the United States.

In answer to this proposition the defendant claims:

1. There is nothing in the act which on its face shows that
35 the assessment against every owner will be greater than the damages awarded him in the condemnation proceedings.

2. That, while the abutting land-owners may complain of the assessment, the township has no right to complain of it, as it is a provision for the benefit of the township as against the abutters.

3. If that part of the act which provides for the assessment should be found to be invalid, yet the remainder of the act would be unaffected thereby, and the debt of the township for the moneys borrowed on the bonds would remain a valid and enforcible obligation against the township.

Taking these claims in inverse order, I do not think the third point can be sustained. The rule is that—

"A statute may be invalid in part by reason of some provision being repugnant to the constitution, and valid as to the residue, where it appears that the invalid part is an independent provision, not in its nature and connection essential to the other parts of the statute, nor so related to the general purpose of the statute as to warrant the conclusion that the legislature would have refused to adopt it with the invalid part stricken out" (Gager *v.* Prout, 48 O. S., 109).

I think it was an essential part of the general purpose of the act in question that the expense of the improvement should be borne by the abutting land-owners, and I do not believe that the legislature would have enacted the law with the assessment clause stricken out. The assessment clause was in line with the general legislative policy, as evidenced by many acts providing for similar improvements passed since 1880. It was a part of the gen-
36 eral purpose of the act to make the improvement at the expense of those presumed to be most benefited thereby, to wit, the abutting land-owners, and it is not to be assumed that the legislature would have passed the law without some special provision requiring them to bear the expense. It cannot be said, therefore, that the assessment clause of this act is separable from the other provisions thereof in the sense that the general purpose of the act could be carried out if that clause were omitted therefrom. Bowles *v.* State, 37 O. S., 35.

If, however, the law should be held to be not in contravention of

the Constitution of the United States if the assessment clause should be held valid, then the failure of the township for any cause to collect the assessment against the abutting lands would not discharge the debt incurred by the township in putting forth these bonds or lessen the obligation of the township to pay it. The payment of the debt, if incurred under a constitutional law, could not be defeated by the failure of the township to realize from the assessment sufficient money with which to pay it. In such an event the township would be required to provide the necessary moneys by a general tax upon all the property of the township. State *v.* Commissioners, 37 O. S., 526.

I do not think the second point made by the defendant is well taken. If the law as a whole be unconstitutional, any one may raise the question. If as a whole it is unconstitutional, it is a nullity; it is not a law, and no one is bound by it (Town *v.* Perkins, 94 U. S., 267).

The first point made by the defendant, that "there is
37 nothing in the act which on its face shows that the assessment against every owner will be greater than the damages awarded him in the condemnation proceedings," is covered by the recent decision of the Supreme Court of the United States in the case of The Village of Norwood *v.* Baker, in which the court say:

"We have seen that by the Revised Statutes of Ohio relating to assessments, that the village of Norwood was authorized to place the cost and expense attending the condemnation of the plaintiff's land for a public street on the general tax-list of the corporation, sec. 2263; but if the village declined to adopt that course, it was required by section 2264 to assess such cost and expense 'on the abutting and such adjacent and contiguous or other benefited lots and lands in the corporation, either in proportion to the benefits which may result from the improvement or according to the value of the property assessed, or by the front foot of the property bounding and abutting upon the improvement;' while by section 2271, whenever any street or avenue was opened, extended, straightened, or widened, the special assessment for the cost and expense, or any part thereof, 'shall be assessed only on the lots and lands bounding and abutting on such part or parts of said street or avenue so improved, and shall include of such lots and lands only to a fair average depth of lots in the neighborhood.' It thus appears that the statute authorizes a special assessment upon the bounding and abutting property by the front foor for the entire cost and expense of the improvement, without taking special benefits into account. And that was the method pursued by the village of Norwood. The corporation manifestly proceeded upon the theory that the abutting property could be made to bear the whole cost of the improvement, whetcher such property was benefited or not to the extent of such cost.

"It is said that a court of equity ought not to interpose to prevent the enforcement of the assessment in question, because the plaintiff did not show nor offer to show by proof that the amount assessed upon her property was in excess of the special benefits accruing to

it by reason of the opening of the street. This suggestion implies that if the proof had showed an excess of cost incurred in opening the street over the special benefits accruing to the abutting property, a decree might properly have been made enjoining the assessment to the extent simply that such cost exceeded the benefits.

We do not concur in this view. As the pleadings show, the
38 village proceeded upon the theory, justified by the words of the statute, that the entire cost incurred in opening the street, including the value of the property appropriated, could, when the assessment was by the front foot, be put upon the abutting property, irrespective of special benefits. The assessment was by the front foot and for a specific sum representing such cost, and that sum could not have been reduced under the ordinance of the village even if proof had been made that the costs and expenses assessed upon the abutting property exceeded the special benefits. The assessment was in itself an illegal one because it rested upon a basis that excluded any consideration of benefits. A decree enjoining the whole assessment was therefore the only appropriate one."

All that is said by the Supreme Court in the Baker case is equally applicable to the case at bar, and upon the ground that the law under which the bonds sued on were issued contravenes the fourteenth amendment to the Constitution of the United States, which provides that private property shall not be taken without due process of law, the demurrer to the petition in this case will be sustained.

39 And afterwards, to wit, on the 13th day of January, A. D. 1899, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Entry—Journal 5, Page 41.

This cause coming on to be heard upon the demurrer of the defendants herein to the petition, having been argued by counsel, and the court, being fully advised in the premises, upon consideration whereof find- that said demurrer is well taken and sustains the same.

And thereupon, the plaintiff not asking to plead further, the court finds that the plaintiff hath no cause of action nor claim in the premises, and it is ordered by the court that the defendants go hence without day and recover from the plaintiff their costs herein expended; to all of which the plaintiff excepts.

And afterwards, to wit, on the 21st day of April, A. D. 1899, the following petition for writ of error was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Petition for Writ of Error.

40 The Circuit Court of the United States for the Southern District of Ohio, Western Division.

LOUIS LOEB, Plaintiff,
vs.
THE TRUSTEES OF COLUMBIA TOWNSHIP, Defendants. } At Law. No. 5099.

Petition for writ of error.

Now comes Louis Loeb, plaintiff herein, and says that on or about the 13th day of January, 1899, this court entered judgment herein in favor of the defendants and against this plaintiff, in which judgment and proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more fully in detail appear from the assignment of errors, which is filed with this petition.

Wherefore plaintiff prays that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

J. W. WARRINGTON,
G. HAMMOND AVERY,
Attorneys for Plaintiff.

And afterwards, to wit, on the 21st day of April, A. D. 1899, the following assignment of errors was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Assignment of Errors.

41 The Circuit Court of the United States, Southern District of Ohio, Western Division.

LOUIS LOEB, Plaintiff,
vs.
THE TRUSTEES OF COLUMBIA TOWNSHIP. } At Law. No. 5099.

Assignment of errors.

The plaintiff in this action, in connection with his petition for a writ of error, makes the following assignment of errors, which he avers occurred upon the trial of the cause, to wit:

I. The court erred in sustaining the demurrer of defendants to the petition of the plaintiff.

II. The court erred in holding section 3 of the certain statute of the State of Ohio mentioned in the petition and involved in said cause to be in violation of amendment XIV to the Constitution of

the United States, and to be so inseparable from the rest of the said statute as to render the whole act unconstitutional and void.

III. The court erred in holding the certain statute of the State of Ohio mentioned in the petition and involved in said cause to be in violation of amendment XIV to the Constitution of the United States.

IV. The court erred in entering judgment in favor of the defendants and against the plaintiff.

J. W. WARRINGTON,
C. HAMMOND AVERY,
Attorneys for Plaintiff.

42 And afterwards, to wit, on the 21*th* day of April, A. D. 1899, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal 5, Page 156.

Order allowing writ of error.

This 21st day of April, 1899, came the plaintiff, by his attorneys, and filed herein and presented to the court his petition praying for the allowance of a writ of error intended to b*y* urged by him, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court — the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error upon the plaintiff giving bond, according to law, in the sum of $500, which shall operate as a supersedeas bond.

And afterwards, to wit, on the 22nd day of April, 1899, the following error bond was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Error Bond.

SOUTHERN DISTRICT OF OHIO, *Western Division,* } *ss:*

Circuit Court of the United States.

LOUIS LOEB, Plaintiff,
vs.
43 THE TRUSTEES OF COLUMBIA TP., HAMILTON COUNTY, Ohio.

Know all men by these presents that we, Louis Loeb, as principal, and Albert H. Bloom and Samuel S. Bloom, as *principals*, are held and firmly bound unto The Trustees of Columbia Township, Hamilton County, Ohio, in the sum of five hundred dollars, to be paid to

the said The Trustees of Columbia Township as aforesaid, its assignees and successors in office; to which payment, well and truly to be made, we bond ouselves and each of us, jointly and severally *and severally*, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals; dated this 22nd day of April, 1899.

Whereas the above-named Louis Loeb has taken out a writ of error to the Supreme Court of the United States of America to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio, western division:

Now, therefore, the condition of this obligation is such that if the above-named Louis Loeb shall prosecute his said writ of error to effect and answer all costs if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

LOUIS LOEB,
Per C. HAMMOND AVERY, [SEAL.]
His Attorney.
ALBERT H. BLOOM. [SEAL.]
SAMUEL S. BLOOM. [SEAL.]

Sealed and delivered in presence of—
GEO. W. HAYS, JR.
ROB'T C. GEORGI.

The above security is approved.

A. C. THOMPSON,
Judge of the U. S., S. D. O.

44 SOUTHERN DISTRICT OF OHIO, *ss:*

I, Albert H. Bloom, one of the sureties above named, do solemnly swear that, after paying my just debts and liabilities, I am worth ten thousand dollars in real estate in my own name, situate in the county of Hamilton, in said district.

ALBERT H. BLOOM.

Sworn to before me the 22nd day of April, 1899.

ROB'T C. GEORGI,
[SEAL.] *Deputy Clerk, U. S. Circuit Court, S. D. O.*

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Samuel S. Bloom, one of the sureties above named, do solemnly swear that, after paying my just debts and liabilities, I am worth ten thousand dollars in real estate in my own name, situate in the county of Hamilton, in said district.

SAMUEL S. BLOOM.

Sworn to before me the 22nd day of April, 1899.

ROB'T C. GEORGI,
[SEAL.] *Deputy Clerk, U. S. Circuit Court, S. D. O.*

45 THE UNITED STATES OF AMERICA, } *ss:*
Southern District of Ohio, Western Division, }

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America within and for the division and district aforesaid, do hereby certify that the foregoing is a full, true, and complete transcript of the proceedings had by and before said court and as the same appears of record and on file in the clerk's office of the court aforesaid.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, Ohio, this 24th day of April, A. D. 1899.

Attest: B. R. COWEN, *Clerk,*

[Seal of the Circuit Court, South'n Dist. of Ohio.]

By JANIE W. T. COWEN,
Deputy Clerk.

46 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of Ohio, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Louis Loeb and The Trustees of Columbia Township, Hamilton County, Ohio, a manifest error hath happened, to the great damage of the said Louis Loeb, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the twenty-first day of May next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Circuit Court, South'n Dist. of Ohio.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 22d day of April, 1899, in the year of our Lord one thousand eight hundred and ninety-nine.

B. R. COWEN,
Clerk of the Circuit Court of the U. S., S. D. O.

[Endorsed:] United States circuit court, S. D. O., W. D. No. 5099. Louis Loeb *vs.* The Trustees of Columbia Township, Hamilton Co., Ohio. Writ of error. Filed April 26th, 1899. B. R. Cowen, clerk.

47 THE UNITED STATES OF AMERICA, *ss:*

To the Trustees of Columbia Township, Hamilton County, Ohio, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the twenty-first day of May next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Ohio, wherein Louis Loeb is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 22d day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

A. C. THOMPSON,
United States District Judge, Southern District of Ohio, Sitting & Holding Circuit Court.

48 [Endorsed:] United States circuit court, S. D. O., W. D. No. 5099. Louis Loeb *vs.* The Trustees of Columbia Township, Hamilton Co., O. Citation to defendant- in error. Filed April 26th, 1899. B. R. Cowen, clerk.

We hereby this 26th day of April, 1899, accept due personal service of this citation on behalf of The Trustees of Columbia Township of Hamilton County, Ohio, defendants in error.

BURCH & JOHNSON,
Attorneys for the Trustees of Columbia Township of Hamilton County, Ohio, Defendants in Error.

Endorsed on cover: File No., 17,385. S. Ohio C. C. U. S. Term No., 276. Louis Loeb, plaintiff in error, *vs.* The Trustees of Columbia Township, Hamilton County, Ohio. Filed April 27, 1899.